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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6535

DATE COMPLAINT FILED: February 27, 2012

DATE OF NOTIFICATION: February 29, 2012

LAST RESPONSE RECEIVED: April 17, 2012

DATE ACTIVATED: May 10, 2012

EXPIRATION OF SOL: February 23, 2017

COMPLAINANT:

J. Gerald Hebert, Executive Director
Campaign Legal Center

RESPONDENTS:

Restore Our Future, Inc. and Charlie R. Spies
in his official capacity as treasurer

Romney for President and Darrell Crate
in his official capacity as treasurer

**RELEVANT STATUTES AND
REGULATIONS:**

2 U.S.C. § 441a(a)(1)(A)

2 U.S.C. § 441a(a)(7)(B)(iii)

2 U.S.C. § 441a(f)

2 U.S.C. § 441b(a)

2 U.S.C. § 434(b)

11 C.F.R. § 100.3

11 C.F.R. § 109.21

11 C.F.R. § 109.23

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint in this matter alleges that Restore Our Future, Inc. ("ROF"), an independent expenditure-only political committee,¹ made a prohibited in-kind contribution to

¹ ROF has not established a separate account for contributions subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (the "Act"). See Stipulated Order and Consent Judgment in *Carey v. FEC*, No. 11-259-RMC (Aug. 19, 2011); see also FEC Statement on *Carey v. FEC*: Reporting Guidance

1 Mitt Romney and his principal campaign committee, Romney for President, Inc. ("Romney for
2 President"), in 2012 by financing the republication of a television advertisement prepared by
3 Romney or his agents. ROF denies the allegation, asserting that, because the advertisement at
4 issue was prepared by Romney and his campaign during his 2008 candidacy, the advertisement
5 cannot be considered "campaign materials prepared by the candidate" for purposes of his 2012
6 candidacy. ROF Resp. at 4 (Apr. 17, 2012) (citing 11 C.F.R. § 109.23(a)).²

7 As set forth below, we recommend that the Commission find reason to believe that ROF
8 violated 2 U.S.C. §§ 441a(a), 441b(a), and 434(b) by making excessive and prohibited in-kind
9 contributions and failing to report these contributions. Because there is no information that the
10 ad at issue was a coordinated communication, however, we recommend that the Commission
11 find no reason to believe that Romney for President violated 2 U.S.C. §§ 441a(f) or 441b(a) by
12 accepting excessive or prohibited in-kind contributions from ROF.

13 II. FACTUAL BACKGROUND

14 Mitt Romney was a candidate for President of the United States in 2008 and designated
15 Romney for President as his principal campaign committee. Statement of Candidacy for Mitt
16 Romney (Feb. 13, 2007). Romney for President registered with the Commission on February 13,
17 2007. Statement of Organization (Feb. 13, 2007). Romney was unsuccessful in his 2008
18 presidential bid and withdrew from the race in February 2008. See ROF Resp. at 3; Liz Sidoti,
19 *McCain Seals GOP Nod as Romney Drops Out*, USA TODAY, Feb. 7, 2008. Romney for
20 President, however, never terminated its registration with the Commission, and, as required by

for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011),
<http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

² ROF submitted with its Response a "Motion for Recusal" requesting that a Commissioner be recused from considering and deciding the matter. ROF Motion for Recusal at 1-2 (Apr. 17, 2012). We do not address that issue in this Report.

1 the Act and regulations, Romney for President continued to file periodic reports disclosing
2 receipts and disbursements over the next two years.

3 On April 11, 2011, Romney filed a statement of candidacy to run for President in 2012,
4 designating his existing committee formed in 2007 — Romney for President — as his “principal
5 committee” and renaming it “Romney for President Exploratory Committee.” See Letter from
6 Mitt Romney to FEC (Apr. 11, 2011). On June 2, 2011, following Romney’s formal public
7 announcement that he would seek the office of President, the Committee again changed its name
8 — reverting back to “Romney for President.” Amended Statement of Organization (Jun. 2,
9 2011).

10 The Complaint references an article in *Politico* reporting on an ROF ad called “Saved,”
11 which highlighted Romney’s efforts in 1996 to help track down the daughter of a Bain Capital
12 colleague, Robert Gay. Emily Schultheis, *Pro-Romney Super PAC Runs Footage From Romney*
13 *'07 Ad*, POLITICO, Feb. 23, 2012, available at [http://www.politico.com/blogs/burns-](http://www.politico.com/blogs/burns-haberman/2012/02/proromney-super-pac-runs-footage-from-romney-ad-115370.html)
14 [haberman/2012/02/proromney-super-pac-runs-footage-from-romney-ad-115370.html](http://www.politico.com/blogs/burns-haberman/2012/02/proromney-super-pac-runs-footage-from-romney-ad-115370.html) (last
15 visited Feb. 12, 2013). Gay narrates the 30-second video as follows:

16 My fourteen year old daughter had disappeared in New York City for
17 three days. No one could find her. My business partner stepped forward
18 to take charge. He closed the company and brought almost all our
19 employees to New York. He said “I don’t care how long it takes, we’re
20 going to find her.” He set up a command center and searched through the
21 night. The man who helped save my daughter was Mitt Romney. Mitt’s
22 done a lot of things that people say are nearly impossible. But, for me, the
23 most important thing he’s ever done is to help save my daughter.

24
25 <http://www.youtube.com/watch?v=j5WI1FrUNzA> (last visited Feb. 12, 2013). A female

26 voice at end of the ad says “Restore Our Future is responsible for the content of this
27 message,” along with the text “PAID FOR BY RESTORE OUR FUTURE, INC.,
28 WHICH IS RESPONSIBLE FOR THE CONTENT OF THIS MESSAGE. NOT

1 AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE.

2 WWW.RESTOREOURFUTURE.COM." According to *Politico*, the "Saved" ad aired in
3 February 2012 in advance of the Arizona and Michigan primaries, which both occurred
4 on February 28, 2012. See Schultheis, *supra*, at 3. ROF posted the ad on YouTube on
5 February 23, 2012.

6 The Complaint alleges that the "Saved" ad "appear[s] identical" to an ad run in 2007 by
7 the Romney campaign called "The Search," except for the "final frame" containing the
8 disclaimers.³ Compl. at 3. "The Search" ad is available on *National Journal's* "Ad Spotlight,"
9 and was reportedly aired by the Romney campaign in December 2007 in New Hampshire. See
10 Mitt Romney for President: "Searched," NATIONALJOURNAL.COM (Dec. 21, 2007),
11 <http://www3.nationaljournal.com/members/adspotlight/2007/12/1221romney1.htm>. The ad
12 concludes with Romney stating, "I'm Mitt Romney and I approved this message," along with the
13 text "PAID FOR BY ROMNEY FOR PRESIDENT, INC. APPROVED BY MITT ROMNEY."
14 *Id.* According to the *National Journal*, the ad's producer was Midnight Ride. *Id.* Midnight Ride
15 was a television and radio advertising firm reportedly founded to consolidate all of Romney's
16 2008 campaign advertising, production, and media buying under one roof, overseen by campaign
17 strategist Alex Castellanos. See Marc Ambinder, *Romney Puts Competition On The Campaign*
18 *Table*, THE ATLANTIC, Jul. 18, 2007, available at
19 [http://www.theatlantic.com/politics/archive/2007/07/romney-puts-competition-on-the-campaign-](http://www.theatlantic.com/politics/archive/2007/07/romney-puts-competition-on-the-campaign-table/50017/)
20 [table/50017/](http://www.theatlantic.com/politics/archive/2007/07/romney-puts-competition-on-the-campaign-table/50017/).

³ In comparing the advertisements, we observed two other immaterial differences. First, video of the skyline over New York City during the first few seconds of each ad has been slightly altered; it appears to have been shot from different vantage points. Second, the two ads very briefly display different shots of Romney at approximately the 22-second mark as well as during the last few seconds.

1 ROF does not dispute that Romney's 2008 campaign prepared the video footage used in
2 the "Saved" ad. ROF asserts, however, that "Mitt Romney, as a candidate for President in 2012,
3 or agents of this candidate and/or his current campaign, had nothing to do with the preparation of
4 ROF's current television advertisement 'Saved.'" ROF Resp. at 3. Based upon the regulatory
5 definition of "candidate," *see* 11 C.F.R. § 100.3(b), ROF contends that Mitt Romney as a
6 "candidate" for President in 2008 is an "entirely different entity" than Mitt Romney as a
7 "candidate" for President in 2012. ROF Resp. at 4. Because "The Search" was "not prepared by
8 Romney, as a current candidate for President, or his authorized committee, or his agents," ROF
9 claims that there has been no republication of any footage or campaign materials prepared by a
10 current "candidate" or campaign for federal office, and therefore no violation of the Act or
11 regulations. *Id.*

12 ROF further asserts that it purchased a license to "use the archival footage" in its "Saved"
13 ad from the "owner," Cold Harbor Films, and that there was no coordination or contact with the
14 Romney campaign. *Id.* at 5. ROF states that the purchase was "an arms-length transaction" and
15 that Cold Harbor Films is not a vendor for Romney's current campaign and thus not an "agent"
16 of the campaign. *Id.*⁴

17 Romney for President submitted a response stating that the Complaint has not alleged it
18 "did anything inappropriate at all." Romney for President Resp. at 1 (Mar. 16, 2012). And

⁴ We do not have any other information about the purchase, such as when the purchase occurred, for how much, or how Cold Harbor Films came to own the rights to an ad used by the Romney campaign in 2007. We have not found any disbursements to Cold Harbor Films in ROF's disclosure reports filed to date. Romney for President disclosed a \$2,515 payment to Cold Harbor Films, however, dated January 18, 2008, for "media." Cold Harbor was reportedly a subcontractor to Midnight Ride, the producer of "The Search." *See* Ambinder, *supra*, at 4.

1 because the Complaint did not claim "misconduct" by Romney for President, it "has no
2 information to provide." *Id.*⁵

3 III. ANALYSIS

4 A. Republication

5 Under the Act, "the financing by any person of the dissemination, distribution, or
6 republication, in whole or in part, of any broadcast or any written, graphic, or other form of
7 campaign materials prepared by the candidate, his campaign committees, or authorized agents
8 shall be considered an expenditure." 2 U.S.C. § 441a(a)(7)(B)(iii). Commission regulations
9 further provide that the republication of campaign materials "prepared by the candidate, *the*
10 *candidate's authorized committee*, or an agent of the foregoing" is considered a contribution for
11 purposes of contribution limitations and reporting responsibilities of the person making the
12 expenditure. 11 C.F.R. § 109.23(a) (emphasis added). Under Commission regulations, however,
13 the candidate who prepared the materials is not considered to have received an in-kind
14 contribution and is not required to report an expenditure, unless the republication is a
15 coordinated communication under 11 C.F.R. §§ 109.21 or 109.37. *Id.* § 109.23(a).

16 ROF does not claim that the content of its "Saved" ad is materially different from the
17 content of "The Search" ad; indeed, ROF concedes that it used "raw footage" from the "The

⁵ Neither the Complaint nor the ROF Response provided any information about amounts spent by ROF on the "Saved" ad. News reports suggest that, from May 3 to 16, 2012, ROF may have spent \$4.3 million or more to air "Saved" in several states. *See, e.g.,* Domenico Montanaro, *Pro-Romney PAC Tries To Fix Romney's Image Problem*, MSNBC.COM (May 19, 2012) (quoting ROF press release stating that it "launched a \$4.3 million TV ad campaign that targets nine states. . . . The group is currently running the ad 'Saved'"), <http://nbcpolitics.msnbc.msn.com/nv/more/section/archive?year=2012&month=5&ci=a&pc=25&sp=325>; Leigh Ann Campbell, *Pro-Romney Group Plans To Spend \$4.3 Million in Key States*, CBS NEWS (May 2, 2012), [http://www.cbsnews.com/8301-503544_162-57426536-503544/pro-romney-group-plans-to-spend-\\$4.3-million-in-key-states/](http://www.cbsnews.com/8301-503544_162-57426536-503544/pro-romney-group-plans-to-spend-$4.3-million-in-key-states/).

1 Search" ad. ROF Resp. at 5.⁶ Rather, ROF argues that "Saved" "was not prepared by Romney
2 as a current candidate" but instead "was prepared and produced by Mitt Romney's prior
3 candidacy and campaign in 2007." ROF Resp. at 4. In support of its interpretation, ROF points
4 to 11 C.F.R. § 100.3, which states that the date on which an "individual" becomes a "candidate"
5 is a function of when the candidate's contributions or expenditures aggregate to \$5,000. ROF
6 argues that, when read together, the definition of election cycle at section 100.3 necessarily
7 limits the reach of the republication provision at section 109.23.⁷

8 ROF's argument — a novel one not previously addressed by the Commission — fails to
9 resolve the matter here. The republication provisions also apply to those campaign materials
10 "prepared by . . . the candidate's *authorized committee*." 11 C.F.R. § 109.23(a) (emphasis
11 added). Reports filed with the Commission show that Romney for President served as Romney's
12 principal campaign committee during the 2008 election, *i.e.*, it was designated and authorized by
13 Romney under 11 C.F.R. §§ 101.1 ("Candidate designations") and 102.1 ("Registration of

⁶ The ROF ad "Saved" replicates the Romney campaign ad "The Search" with only minor variations (*e.g.*, the disclaimer at the end of each ad), which distinguishes this matter from previous republication matters in which there were substantive differences between the "campaign materials" and the third-party communications. *See, e.g.*, MUR 6502 (Nebraska Democratic Party) (no republication where state-party ads used common political phrase previously used in a "tweet" posted by candidate's campaign but contained significant additional language that differed from the campaign materials); MUR 6037 (Merkley) (no republication where state party ads featured candidate and contained issues and messages similar to candidate's press releases but also included different language and phrases).

⁷ The Commission has not considered whether the phrase "campaign materials prepared by the candidate" is limited to campaign materials prepared during the same election cycle in which a third party republishes the materials. We located one enforcement matter, MUR 5672 (Save American Jobs Association), that involved the use of "campaign materials" distributed by a third party that were produced in a prior election cycle; however, there was no substantive discussion of the timing issue in any Commission documents. The Complaint in MUR 5672 alleged, among other things, that Save American Jobs Association ("Association"), a 501(c)(4) corporation, republished campaign materials by hosting on its website a campaign video during Jack Davis's 2006 congressional campaign; the video had been produced by the Davis campaign during his 2004 candidacy for the same office. This Office recommended that the Commission find reason to believe that the hosting of the video constituted a republication of campaign materials, but to take no further action and admonish the Association in light of the likely *de minimis* costs involved. The Commission dismissed the allegation "in the proper ordering of its priorities" without further explanation, citing *Heckler v. Chaney*, 470 U.S. 821 (1985). *See* Statement of Reasons, Comm'rs Lenhard, Mason, von Spakovsky, and Weintraub, MUR 5672 (May 31, 2007). The Commission did not admonish the Association or make any finding or statement that could be construed either as accepting or disputing OGC's republication analysis.

1 political committees”), and it continued to operate as such after he dropped out of the race in
2 February 2008 and after the 2008 general election. Romney for President *never* terminated its
3 registration with the Commission, and Romney *never* designated a new principal campaign
4 committee for his 2012 campaign. Instead, Romney redesignated his existing committee by
5 amending Romney for President’s Statement of Organization. While transitioning from the 2008
6 to the 2012 campaign, Romney for President also maintained the same treasurer and custodian of
7 records. Romney for President in 2012 used (and uses) the same committee identification
8 number assigned by the Commission that it used for the 2008 election.

9 The authorized committee that prepared the video footage used in the “Saved” Ad is the
10 same entity as Romney’s authorized committee for the 2012 election cycle. Romney for
11 President, as an ongoing entity, is therefore the “authorized committee” that prepared the ad for
12 purposes of determining whether the ad was “disseminat[ed], distribut[ed], or republi[shed]”
13 under 11 C.F.R. § 109.23.

14 Because the “Saved” advertisement uses video footage “prepared” by Romney’s
15 authorized committee, we conclude that ROF republished campaign materials. We therefore
16 recommend that the Commission find reason to believe that ROF violated 2 U.S.C. §§ 441a(a),
17 441b(a),⁸ and 434(b) by making prohibited and excessive in-kind contributions to the Committee

⁸ While section 441b(a) does not explicitly prohibit a political committee from making a corporate contribution, the provision was originally enacted on the premise that committees could not accept corporate contributions at all. In enforcing the ban on corporate contributions in the context of party committees using non-federal funds for federal activities, the Commission has taken the position that a political committee may violate section 441b(a) by spending or disbursing corporate funds. *See* MUR 3774 (National Republican Senatorial Committee) (finding probable cause to believe that the party committee violated 2 U.S.C. §§ 441b and 441a(f) and 11 C.F.R. § 102.5(a) by using prohibited and excessive funds for Get Out the Vote activities that benefited federal candidates); Conciliation Agreement ¶ V, MUR 1625 (Passaic County Democratic Party) (state party committee, which used non-federal funds to make coordinated party expenditures, admitted that it violated section 441b(a) “by using funds prohibited in connection with federal elections”). Moreover, in MUR 4788 (California Democratic Party), the Commission found reason to believe that the California Democratic Party and the Democratic State Central Committee of California violated 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a)(1)(i) by disbursing non-federal funds for communications expressly advocating the election of a federal candidate that have either resulted in

1 when it republished Romney for President' campaign materials, and by failing to disclose the
2 expenditures as contributions to the Committee.

3 **B. Coordination**

4 A candidate or authorized committee whose campaign material is republished "does not
5 receive or accept an in-kind contribution . . . unless the dissemination, distribution, or
6 republication of campaign materials is a coordinated communication." 11 C.F.R. § 109.23(a). A
7 communication is coordinated with a candidate, a candidate's authorized committee, or agent of
8 the candidate or committee when the communication satisfies the three-pronged test set forth in
9 11 C.F.R. § 109.21(a): (1) the communication is paid for by a person other than that candidate or
10 authorized committee; (2) the communication satisfies at least one of the content standards set
11 forth in 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of the conduct
12 standards set forth in 11 C.F.R. § 109.21(d).⁹

13 1. Payment

14 The payment prong of the coordination regulation, 11 C.F.R. § 109.21(a)(1), is satisfied.
15 There is no dispute that ROF paid for the ad.

16 2. Content

17 The content prong of the coordination regulation is also satisfied. The content prong is
18 satisfied, *inter alia*, if a communication is an electioneering communication under 11 C.F.R.

independent expenditures or in-kind contributions if coordinated with the candidate. The Commission ultimately filed suit against the respondents and obtained summary judgment that the state party committees violated section 441b and 11 C.F.R. § 102.5 by using non-federal funds to make disbursements for advertisements constituting independent expenditures. See *FEC v. California Democratic Party*, 2004 WL 865833, Civ. No. 03-0547 (E.D. Cal. Feb. 13, 2004).

⁹ The Commission's regulations at 11 C.F.R. § 109.21 provide that coordinated communications constitute in-kind contributions from the party paying for such communications to the candidate, the candidate's authorized committee, or the political party committee which coordinates the communication. As an in-kind contribution, the costs of coordinated communications must not exceed a political committee's applicable contribution limits. See 2 U.S.C. § 441a.

§ 100.29 or a public communication that refers, in relevant part, to a clearly identified Presidential candidate, and is publicly distributed or disseminated in a jurisdiction 120 days before the primary in that jurisdiction, up to and including the day of the general election. *See* 11 C.F.R. § 109.21(c).

The "Saved" ad identified Presidential candidate Mitt Romney and was reportedly broadcast on television in Michigan and Arizona within a week of the February 28, 2012, primary elections in those states. Thus, the ad qualifies as a public communication referring to a clearly identified candidate distributed within 120 days of a primary election in the relevant jurisdiction. 11 C.F.R. § 109.21(c)(4)(ii). It also appears to qualify as an electioneering communication, as it refers to a clearly identified federal candidate, was broadcast within 30 days of a primary election, and the broadcast likely could be received by 50,000 or more persons in a state holding a primary. *See* 11 C.F.R. § 100.29.

3. Conduct

The Commission's regulations set forth the following six types of conduct between the payor and the committee, regardless of whether there is an agreement or formal collaboration, that satisfy the conduct prong of the coordination standard: (1) the communication "is created, produced, or distributed at the request or suggestion of a candidate or an authorized committee," or if the communication is created, produced, or distributed at the suggestion of the payor, the candidate or authorized committee assents to the suggestion; (2) the candidate, his or her committee, or their agent is materially involved in, *inter alia*, the content, intended audience, or means or mode of communication; (3) the communication is created, produced, or distributed after at least one substantial discussion about the communication between the person paying for the communication, or that person's employees or agents, and the candidate or his or her

1 authorized committee, his or her opponent or opponent's authorized committee, or a political
2 party committee; (4) a common vendor uses or conveys information material to the creation,
3 production or distribution of the communication; and (5) a former employee or independent
4 contractor uses or conveys information material to the creation, production, or distribution of the
5 communication. 11 C.F.R. § 109.21(d)(1)-(5). A sixth conduct prong instructs that the
6 dissemination, distribution, or republication of campaign materials applies only if there were a
7 request or suggestion, material involvement, or substantial discussion that took place after the
8 original preparation of the campaign materials that are disseminated, distributed, or republished.
9 See 11 C.F.R. § 109.21(d)(6); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 439
10 (Jan. 3, 2003).¹⁰

11 The material involvement, substantial discussion, common vendor, and former employee
12 or independent contractor standards of the conduct prong are not satisfied "if the information
13 material to the creation, production, or distribution of the communication was obtained from a
14 publicly available source." 11 C.F.R. § 109.21(d)(2)-(5); see Coordinated Communications, 71
15 Fed. Reg. 33,190, 33,205 (June 8, 2006) (explaining that "[u]nder the new safe harbor, a
16 communication created with information found . . . on a candidate's or political party's Web site,
17 or learned from a public campaign speech . . . is not a coordinated communication . . ."). To
18 qualify for the safe harbor for the use of publicly available information, "the person paying for
19 the communication bears the burden of showing that the information used in creating, producing
20 or distributing the communication was obtained from a publicly available source." 71 Fed. Reg.
21 at 33,205.

¹⁰ The conduct standards of subsections (d)(4) (common vendor) and (d)(5) (former employee or independent contractor) may also apply to such communications. *Id.*

1 The ad "The Search" appears to have been accessible to the general public on the internet
2 shortly after it was first broadcast in 2007, suggesting the possible application of the safe harbor
3 for "publicly available" information. But ROF states that it "purchased [the] footage from Cold
4 Harbor Films" through an "arms-length transaction." ROF Resp. at 5. It is unclear, however,
5 from ROF's response whether the footage was available for sale to the general public. It
6 therefore has not met its "burden of showing that the information used in creating, producing or
7 distributing the communication was obtained from a publicly available source." 71 Fed. Reg. at
8 33,205.

9 ROF asserts that it did not coordinate or contact the Romney campaign and that Cold
10 Harbor is not a vendor for Romney's current campaign and therefore not an "agent" of the
11 campaign under the Commission's regulations.¹¹ Although the 120-day window in the common
12 vendor and former employee or independent contractor provisions preclude application of these
13 conduct prongs in this matter, *see* 11 C.F.R. § 109.21(d)(4)-(5), that does not fully answer
14 whether Cold Harbor Films acted as an "agent" on behalf of the Romney campaign when it
15 provided the footage.¹²

16 Other than ROF's assertion that Cold Harbor Films owned the "archival footage" in "The
17 Search," however, we have no information about any agreement between that vendor and
18 Romney's 2008 campaign or his current campaign. And there is no information suggesting that

¹¹ Our review of Romney for President's FEC reports during the current election cycle revealed no disbursements to Cold Harbor Films.

¹² The common vendor prong is satisfied when (1) the person paying for the communication contracts with or employs a commercial vendor to create, produce, or distribute the communication; (2) that commercial vendor has provided any of the enumerated services to the candidate who is clearly identified in the communication during the previous 120 days; and (3) that commercial vendor uses or conveys to the person paying for the communication information about the campaign plans, projects, activities or needs of the clearly identified candidate, and that information is material to the creation, production or distribution of the communication. *See* 11 C.F.R. § 109.21(d)(4). As used in the regulation, candidates and authorized committees include their agents, *id.* § 109.20(a), and an "agent" is any person who has actual authority, either express or implied, to engage in certain specifically enumerated activities on behalf of a federal candidate or committee. *See id.* §§ 109.3(b), 109.20(a).

1 Romney's 2012 campaign had any knowledge of — much less authorized — the transaction
2 between ROF and Cold Harbor Films. Romney for President, for its part, declines to provide
3 any information, accurately noting that the Complaint has not alleged that it "did anything
4 inappropriate." Romney for President Resp. at 1.

5 In short, there is nothing in the record showing that the communication at issue was
6 coordinated with the Romney campaign. We therefore recommend that the Commission find no
7 reason to believe that Romney for President violated 2 U.S.C. §§ 441a(f) or 441b(a) and close
8 the file as to Romney for President.

9 IV. INVESTIGATION

10 We do not know how much ROF spent on the advertisement at issue. ROF reportedly
11 spent \$4.3 million or more to air "Saved" in several states, but we cannot confirm this
12 information based on ROF's filings with the Commission, which disclose only that ROF made
13 substantial independent expenditures on behalf of Romney during the period at issue.
14 Accordingly, we will seek to determine how much ROF spent to distribute the ad. Although we
15 will endeavor to obtain that information voluntarily from ROF, we recommend that the
16 Commission authorize the use of compulsory process, including the issuance of appropriate
17 interrogatories, document subpoenas, and deposition subpoenas, as necessary.

18 V. RECOMMENDATIONS

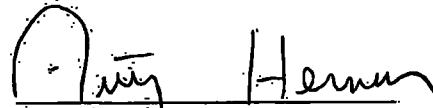
- 19 1. Find reason to believe that Restore Our Future, Inc. and Charlie R. Spies in his
20 official capacity as treasurer violated 2 U.S.C. §§ 441a(a), 441b(a), and 434(b).
21
- 22 2. Find no reason to believe that Romney for President and Darrell Crate in his
23 official capacity as treasurer violated 2 U.S.C. §§ 441a(f) or 441b(a), and close
24 the file as to them.
25
- 26 3. Authorize the use of compulsory process.
27

4. Approve the attached Factual and Legal Analyses.

5. Approve the appropriate letters.

Date 2/26/13

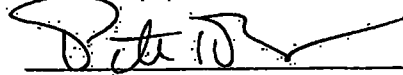
BY:



Anthony Herman
General Counsel



Daniel A. Petalas
Associate General Counsel for
Enforcement



Peter G. Blumberg
Assistant General Counsel



Jim Lee
Attorney